

United States Congress
WASHINGTON, DC 20510

February 6, 2012

Via Electronic Transmission

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

As members of the U.S. Senate Finance Committee and House Committee on Ways and Means, we write to express our concerns regarding Ernst & Young's recent independent audit of the Department of Health and Human Services (HHS or Department) FY 2011 financial statements. This audit, contracted through the HHS Office of Inspector General, reveals significant shortcomings and material weaknesses within HHS' financial management system. It is unacceptable that HHS fails to maintain accurate financial records and fails to adhere to federal law designed to protect taxpayer dollars from mismanagement and waste.

While Ernst & Young's audit findings noted that HHS has made some progress in its financial reporting systems, analyses, and oversight this past year, there is need for continued improvement. According to Ernst & Young, "because weaknesses continue to exist in the financial management system, management must compensate for the weaknesses by strengthening manual and other internal controls to ensure that errors and irregularities are detected in a timely manner."¹ Troublingly, Ernst & Young found that HHS is not in full compliance with the Improper Payments Information Act (IPIA) of 2002 and the Improper Payment Eliminations and Recovery Act (IPERA) of 2011.² The audit included several concerning findings and we are requesting the Department respond to each of the issues and questions raised below.

- **Anti-Deficiency Act Violations.** During FY 2011, HHS' management declared several violations of certain Anti-Deficiency Act provisions (P.L. 101-508 and OMB Circular A-11).³ In order to assess the nature and scope of the financial management problems at HHS, we request that HHS provide the following information for each Anti-Deficiency Act violation under investigation:

¹ Ernst & Young Report on the Financial Statement Audit of the Department of Health and Human Services for Fiscal Year 2011 (A-17-11-00001) at II-6.

² *Id.* at II-41.

³ *Id.* at II-41.

- The amount associated with a deficiency and whether the deficiency was associated with any provision of the Patient Protection and Affordable Care Act of 2010 or Health Care and Education Reconciliation Act of 2010;
 - The reason(s) for the deficiency; and
 - The internal controls implemented in 2011 to ensure that future Anti-Deficiency Act violations do not occur in the future.
- **Accounts Differ by \$500 Million – An Increase of \$100 Million since September 2010.** The Ernst & Young audit states, “As of June 30, 2011, the general ledger and Treasury’s records differed by more than an approximate absolute value of \$500 million. This primarily relates to differences that were not adequately researched and cleared from the Suspense Account Reconciliation.”⁴ This amount is an increase of approximately \$100 million from September 30, 2010. We request that HHS explain why its general ledger and Treasury records are not reconciled and what steps it is taking to ensure that this longstanding problem is resolved.
- **\$886 Million in Mystery Money – An Increase of More \$450 Million since 2010.** The Ernst & Young audit noted that desk officers are responsible for reviewing specific operating division financial reporting, but do not consistently review the supporting documentation to ensure that the submissions are accurate or fully supported. Based on operating division level financial statements, Ernst & Young identified approximately \$866 million in differences that could not be identified.⁵ This amount is an increase of more than \$450 million from the amounts included in the audit for the period ending September 30, 2010. We request that HHS explain why its general ledger and Treasury records are not reconciled and what steps it is taking to ensure that this ongoing problem is resolved.
- **\$2 Billion in Taxpayer Dollars in Limbo Disappears in the 2011 Financial Audit.** The 2010 audit found approximately 102,500 transactions representing “travel, grants, and contracts awaiting close-out,” totaling \$1.8 billion that were open without any activity for more than two years. We request that HHS explain whether it closed all transactions identified in the 2010 audit and to identify the amount of “travel, grants, and contracts awaiting close-out” that were open without any activity by operating division or staff division for more than a year.
- **HHS Processes Date Back to 1980’s.** Ernst & Young found that, “During our internal control documentation and testing phases, we noted that, although various internal control processes had been changed or updated, the Department had not completed its updating of procedural manuals to ensure sufficient knowledge of financial management systems/processes or consistency and adequacy of internal control. For example, we noted that certain policies and procedures, including certain accrual processes, had not been updated since the mid-1980s. It is our understanding that the Department and its operating divisions are currently updating their financial management procedures.”⁶ We request that

⁴ *Id* at II-29.

⁵ *Id* at II-29.

⁶ *Id* at II-30.

HHS explain its efforts to update procedural manuals and to estimate when HHS' policies and procedures will be made current.

- **\$2.6 Billion Owed to Employer-based Retiree Prescription Drug Plans – An Increase of \$700 Million Since FY 2010.** The Medicare Retiree Drug Subsidy (RDS) program makes subsidy payments available to sponsors of retiree prescription drug coverage.⁷ We request that HHS explain what efforts it is taking to make timely payments to employers and unions for the Medicare RDS and to provide a list of the top 10 employers and unions that are owed money through the RDS and the amount owed.
- **\$3.8 Billion Owed to CMS – An Increase of \$2.2 Billion Since FY 2010.** The Medicare Prescription Drug program accounts receivable of \$3.8 billion consists of amounts due to CMS after completion of the Part D payment reconciliation and the Coverage Gap Discount.⁸ We request that HHS explain what efforts it is taking to collect accounts receivable associated with the MPD program and to explain the significant increase in accounts receivable since 2010.

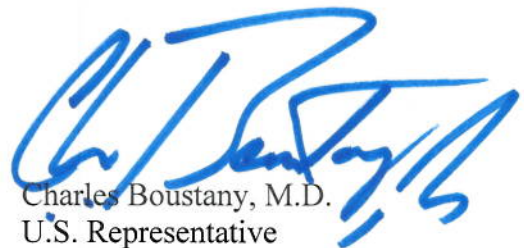
Finally, the Ernst & Young audit, which was completed on November 14, 2011, contained a number of recommendations that would strengthen the Department's fiscal management and oversight (pages II-22, II-23 and II-36 – II-38). To assist us in our oversight responsibilities, please provide a response to the detailed questions found above, a detailed corrective action plan for all issues the audit has identified, and a response to the audit's recommendation for further corrective action. Please provide the response by no later than March 15, 2012.

We know you share our determination to ensure that all federal agencies are good financial stewards. We look forward to your response.

Sincerely,



Tom Coburn, M.D.
U.S. Senator



Charles Boustany, M.D.
U.S. Representative

⁷ *Id* at II-72.

⁸ *Id* at II-69.